

1 West - cross

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2 Would that be correct?

3 A Yes.

4 Q And if either the -- I think you  
5 said the take rate changed or the discounts  
6 changed, then that would affect the final total  
7 benefits obtained by the Schools and Libraries.

8 Would that be correct?

9 A In aggregate, yes. I mean the  
10 difficulty here is we have committed to certain  
11 initiatives. You obviously can't put an ironclad  
12 price tag on the initiatives until they are  
13 completed.

14 In other words, you don't know  
15 what take rate would be realized and the essence  
16 of the commitment is the initiative. I mean, the  
17 initiative may end up costing more than \$130  
18 million or it may end up costing less. We don't  
19 feel bound by the absolute quantity of the  
20 dollars. What we feel bound by is the  
21 commitments to the various initiatives.

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2 Q But if whoever came up with the  
3 \$50 million had a crystal ball and could see  
4 perfectly into the future and everything worked  
5 out the way they planned, it would be a \$50  
6 million commitment that was satisfied. Would  
7 that be correct?

8 A In that extremely unlikely  
9 hypothetical, yes.

10 Q You're doubting someone who made  
11 the estimate?

12 I'm just kidding.

13 Now, are the services listed on  
14 Schedule A the services that are available for  
15 discounts to schools and libraries?

16 A Yes, they are.

17 Q And is it my understanding that  
18 all the services there other than the ATM  
19 services are currently available for a school to  
20 order today?

21 A Certainly the first three  
22 categories are available today. I'm not sure  
23 what the status is of ATM in terms of the ability  
24 to order it or not order it.

25 Q And any eligible school could

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2 purchase the services at the proposed education  
3 rates listed on schedule A. Is that accurate?

4 A Any school as I understand the  
5 process would have the ability to alternatively  
6 select their discount rate or the discount rate  
7 out of the Federal Universal Service Fund  
8 discount matrix.

9 Q We are probably going to get into  
10 that anyway, can you point me to any place in the  
11 ONJ stipulation where that is set forth?

12 A I think it would be difficult for  
13 that to be in the stipulation given that it was  
14 signed before the Federal Discount matrix was  
15 published.

16 Q And there has been no amendment or  
17 modification to the stipulation that you are  
18 aware of, is that correct?

19 A Well, it's my understanding there  
20 doesn't need to be. These are two sets of  
21 discounts that co-exist as alternatives to the  
22 schools and libraries.

23 Q But you cannot point me to any  
24 document or language that was entered into  
25 between the three parties that signed this

2 stipulation that states that schools should  
3 choose between either the Schedule A discount  
4 rate or the discount rate set forth in the FCC's  
5 order, is that correct?

6 A That's correct, because such  
7 language is not likely to exist when you look at  
8 the time frame in which the stipulation was  
9 signed and you look at the great uncertainty  
10 surrounding what the ultimate federal lifeline  
11 program might look like.

12 Q You referred to the federal  
13 lifeline program. You are referring to the  
14 federal schools and libraries universal service  
15 fund?

16 A Excuse me. I mean to say the  
17 Federal Universal Service program.

18 Q The FCC order came out and was  
19 released on May 8th. Is that your understanding?

20 A Yes, it is.

21 Q To the best of your knowledge from  
22 May 8th to today there has been no agreement  
23 entered into that reflects your statement that  
24 schools can choose between - - or should choose  
25 between the two separate discounts.

2 Is that accurate?

3 MR. DENNEHY: Excuse me, could  
4 that question be repeated? I didn't  
5 hear - -

6 MR. PAPPALARDO: Let me restate  
7 it again.

8 Q Since May 8th, the time the FCC  
9 order was released to the current date, there has  
10 been no document or agreement that was entered  
11 into between the parties to the stipulation that  
12 reflects your comment that schools were required  
13 to choose between either the Schedule A discount  
14 or the FCC discount. Is that correct?

15 A That's correct, and I'm not sure  
16 that there is a need to be one.

17 Q Now, the rate on Schedule A that a  
18 school or library would pay, that's essentially  
19 the proposed education rate - - that's  
20 essentially the retail rate for schools and  
21 libraries who takes it, is that correct?

22 A I would characterize it as the  
23 post discount rate.

24 Q It's not a retail rate, in other  
25 words?

A It's what I would characterize a retail or tariff rate times the Schedule A discount and therefore a post discount rate.

Q So you take a retail rate but you end up with a post discount rate and not a retail rate?

A That's correct.

Q Are there any schools or libraries that you are aware of that would not receive the Schedule A discount enclosed as part of the stipulation?

A I think I can think of at least circumstances where they wouldn't. One would be that they don't have any of these services at all and the other would be where they opted to purchase these services and receive discounts through the Federal Universal Service Fund program.

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2 Q Is the eligibility criteria for a  
3 small library to receive this Schedule A discount  
4 essentially analogous to the criteria set up by  
5 the FCC for school and libraries to receive the  
6 federal discount?

7 A My understanding is that the  
8 schools in the K to 12 range, to that extent,  
9 they are analogous, yes.

10 Q For example, today before the  
11 Universal Fund mechanism is fully implemented on  
12 1/1/98, if a school was willing or wished to  
13 purchase a SMDS service and was technically able  
14 to use that service, then it would receive the  
15 \$100 rate, I assume that's a monthly rate?

16 A Yes.

17 Q It would receive \$100 per month  
18 rate that is reflected on Schedule A, is that  
19 correct?

20 A Right. That would be the  
21 effective rate after applying for the discount.

22 Q It would not pay for the tariff  
23 rate of 225?

24 A That's correct.

25 Q And the \$100 rate would stay the

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2 same unless the tariff rate changed, is that the  
3 way the process works?

4 A Yes.

5 Q By the way, can you explain to me  
6 what is SMDS services, are you familiar with  
7 that?

8 A I know it's a data service. I  
9 don't know the ins and outs of the particular  
10 service.

11 Q Is it something that schools may  
12 well take advantage of if they had the need and  
13 technical set up for it?

14 A Well, looking the speed of the  
15 service, I'm assuming it's a broadband type data  
16 service.

17 Q For that service are you, or for  
18 any other services on Schedule A, are you aware  
19 if Bell Atlantic has lower rates than it charges  
20 similarly situated non-residential customers for  
21 these services?

22 The rate I'm referring to is the  
23 proposed education rate.

24 A I don't know that. It's possible  
25 that there are off tariff rates that have been



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2 effectuated through special rate assemblies. But  
3 I don't know where the rate would fall when  
4 they're in the interval between the tariff rate  
5 and the post discount rate or even lower.

6 Q And all schools that wanted to get  
7 the SMDS service we're talking about would be  
8 entitled to the proposed education rate as of  
9 today, is that correct?

10 Or put it another way, could Bell  
11 choose or discriminate between schools in  
12 deciding whether they get the tariff rate or the  
13 proposed education rate?

14 A All schools would be eligible for  
15 the tariff rate and would ultimately, if they  
16 choose the alternative discount, would receive an  
17 effective rate which would be the tariff rate  
18 times the discount rate.

19 With respect to the off-tariff  
20 pricing, I believe those rates would be  
21 equivalent as long as the customers were  
22 "similarly situated".

23 Q If two schools were similarly  
24 situated and the \$100 rate was the lowest rate as  
25 compared to other off-tariff rates and both

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schools could get the Bell discount, say one school gets it, one school does not, is that correct?

A Well, both schools could get the \$100 rate because the 225 is the tariff rate and the \$100 rate is the effective rate after the discount. So the tariff does not take into account similarly situated.

2 Q If another carrier wanted to reach  
3 out the Schedule A services to eligible schools  
4 and libraries, what rate would Bell charge those  
5 carriers?

6 A If they were going to sell the  
7 service back to a school or library, I would  
8 think the proper rate to apply the wholesale  
9 discount to would be the post-discount rate. If  
10 not, then I think it needs to revert back to the  
11 tariff rate.

12 Q You're referring to a post-  
13 discount rate?

14 A That's what you're referring to,  
15 the proposed education rate, yes.

16 Q Now you're familiar, I believe,  
17 which you previously answered, with the FCC May  
18 8th Order for schools and libraries?

19 A Yes.

20 Q And that Order provides that  
21 eligible schools and libraries will ultimately  
22 submit funding requests to the Fund  
23 Administrator, is that your understanding of the  
24 Order?

25 A Yes, as part of the integrated

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2 policy plan, yes.

3 Q And these requests for the  
4 discount will only be made after the schools and  
5 libraries have gone through the bidding process  
6 and entered into agreement with specific carriers  
7 for specific services, is that your  
8 understanding?

9 A Yes, it is.

10 Q Now it's assumed we're in the 1-1-  
11 98 or after, when we have the fund in operation  
12 and assume that the school has filed their bid  
13 process properly and determined it will purchase  
14 the service from Bell Atlantic at the rate of  
15 225, is that the rate that is used as the basis  
16 for calculating a discount amount that the school  
17 will then be eligible for?

18 A Yes.

19 Q And so therefore assuming that  
20 schools eligible for a 50 percent discount under  
21 the matrix and that school will pay Bell Atlantic  
22 \$112.50 and Bell Atlantic would receive  
23 reimbursement from the Federal Fund in an equal  
24 amount, is that correct?

25 A If that's the discount it chooses,

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2 yes.  
3 Q Well, if that's the discount they  
4 were eligible for. At this time I'm not  
5 referring to Schedule A at this point, but any  
6 service.  
7 A I understand.  
8 Q So it was agreed earlier that the  
9 prediscount price is \$225 as an example, is that  
10 correct?  
11 A Yes.  
12 Q Similarly, if the rate <sup>is subject to a 50</sup> ~~250~~ percent  
13 discount, the school would pay Bell 100 and Bell  
14 would receive \$100 from the fund  
15 A Yes.  
16 Q And the prediscount price would be  
17 \$200?  
18 A Right.  
19 Q And we have been using 50 percent  
20 as a discount, but just to make it clear, if the  
21 price for the service was 125, the discount is 20  
22 percent; then the school would pay 100, if you  
23 accept my math on that?  
24 A I think your math is right, yes.  
25 Q And 125 again is the prediscount

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2 price?

3 A Yes.

4 Q And according to the FCC formula,  
5 the prediscount price, and I'll refer to  
6 Paragraph 473 of the FCC Order. Do you have a  
7 copy of that?

8 A Yes, I do.

9 Q And if you look at that paragraph,  
10 it states that the prediscount price is the total  
11 amount that the carrier will receive for the  
12 services they sell to schools and libraries: the  
13 sum of the discounted price paid by a school or  
14 library and the discount amount that the carrier  
15 can recover from the Universal Service mechanism  
16 for providing such service.

17 Have I read that correctly?

18 A Yes, you have.

19 Q So, for example, our last example  
20 then, the discounted price paid by the schools or  
21 libraries was \$100, the discounted amount that  
22 Bell, if the carrier used here, for example, has  
23 recovered his \$25 and prediscount price is \$125?

24 A Yes.

25 Q Now let's take another example.

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2 If you have a school that wants the SMDS service  
3 we used earlier and a school that were eligible  
4 for a 60 percent discount, under the matrix, the  
5 60 percent discount works out to \$90 of the  
6 tariff rate, of \$225?

7 A Okay.

8 Q Is it Bell Atlantic's position the  
9 rate -- the school wants to pay the lowest cost?  
10 It should select the USSFCC discount and pay \$90  
11 rather than the proposed education rate of \$100?

12 A Right. Bell Atlantic assumes the  
13 school is going to be rationale and will pay as  
14 little for a facility as it can.

15 Q And you're aware that the State of  
16 New Jersey has adopted the same matrix for  
17 interstate services, correct?

18 A Yes.

19 Q Is the SMDS to your knowledge  
20 solely an interstate service?

21 A I would doubt that.

22 Q Now, can you point me to any place  
23 in the FCC Order that you're aware of that says  
24 that a school should choose between the discount  
25 rate offered by the Federal Universal Fund and

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the alternative rate, discount rate?

A No, I don't believe the FCC Order contemplated this situation that exists in New Jersey today where there are alternative discounts.



Q Now in our example, what Bell Atlantic hoped to get reimbursement from the Federal Fund for that service that is provided to the school?

A Sure.

If Bell Atlantic were the provider of the service and they chose Bell Atlantic through the bidding process and the service qualifies for that level of discount, the discount is coming to Bell Atlantic.

Q And what amount does Bell Atlantic believe that it would receive in that example?

Again, just to refresh your memory, the \$225 tariff rate using the 60 percent discount, \$90 final rate in this example?

A \$135.

Q In other words, the pre-discount price is \$225?

A Yes.

Q And in other words - - well, is one consequence of that then that none of the money that has been used towards providing that service to a school would really be counted towards the earlier \$15 million figure that we

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2 talked about?

3 A That's correct. I'm not sure that  
4 I want to sign up for the necessity to count that  
5 way. But you're correct in the calculation.

6 Q And so if every school worked out  
7 that they had met the criteria that gave them a  
8 higher percent discount than the discount listed  
9 on Schedule A, ad you mentioned, it would be  
10 rational for them to take the higher discount and  
11 Bell Atlantic would seek to receive from the  
12 federal funds the difference between what the  
13 school pays and the tariff rate listed on  
14 Schedule A.

15 And in effect, no monies would be  
16 counted towards the \$50 million that we discussed  
17 earlier, in that hypothetical?

18 A In that hypothetical, sure.

19 Two points, one, we have  
20 established the \$15 million was based on a take  
21 rate. In that hypothetical the take rate is zero  
22 so it's not surprising the answer you get is  
23 zero. And also given the average discount that  
24 schools and libraries of New Jersey are likely to  
25 be eligible for is somewhere in the range of 50

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2 percent, when you look at the range of the  
3 percent discounts on Schedule A, you will see  
4 that that hypothetical is probably not very  
5 likely since there are above 50 percent and some  
6 below 50 percent.

7 Q You say the take rate is zero.  
8 Now aren't the, aren't they taking these  
9 services?

10 A Not from an alternative discount  
11 Schedule A.

12 Q It's the same service regardless  
13 of what the take is, from the proposed education  
14 rate or the tariff rate, isn't it?

15 A Yes, it is.

16 Q So isn't what really zero is the  
17 amount of money that Bell is putting towards  
18 making up the difference between the tariff rate  
19 and the proposed education rate?

20 A Not at all. The zero is  
21 reflective of how many customers have opted to  
22 buy these services under Schedule A.

23 Q And in effect, Bell Atlantic is  
24 being made whole because it's receiving money  
25 from the Federal Fund and from the schools?

2 They are getting their entire  
3 tariff rate?

4 A Sure. That's the intent of the  
5 Federal services to afford schools and libraries  
6 steeply discounted services without killing the  
7 local exchange carriers.

8 Q Was it the intent of the ONJ  
9 stipulation for Bell to receive this tariff rate  
10 when selling the services to schools and  
11 libraries?

12 A Well, the attempt was to provide  
13 the schools and libraries an alternative to  
14 receive steep discounts, something like the ones  
15 that ultimately ended up in the FCC order on  
16 these tariff rates.

17 Q If the FCC order had come out  
18 prior to the stipulation, would that mean that  
19 Bell would not have seen a need to offer all of  
20 these discounts because these schools would  
21 receive funding from the federal fund?

22 A I think it's tough to engage in  
23 that kind of history, but that certainly is  
24 possible when you look at what the motivation is  
25 for Schedule A in the first place.

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2 Q And what is your understanding of  
3 the motivation of Schedule A again?

4 A At the time the stipulation was  
5 signed, there was a good deal of uncertainty of  
6 what the Federal Universal Program might look  
7 like and what sort of discounts might be  
8 available to schools and libraries.

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2 Q Was the motivation for entering  
3 into Schedule A contingent or at all connected to  
4 whether there was an establishment of Federal  
5 Universal Service Fund for schools and libraries?

6 MR. DENNEHY: Commissioner, I'm  
7 going to object to the phrasing of that  
8 question because Mr. Pappalardo is asking  
9 Mr. West to speculate to motivation of a  
10 document that was signed, not only by  
11 Bell Atlantic-New Jersey, but by the  
12 Ratepayer Advocate and the Board's Staff.

13 COMMISSIONER ARMENTI: Yes. Do  
14 you want to rephrase the question?

15 Q What is the basis for your  
16 previous answer regarding the motivation for  
17 entering into Schedule A?

18 A My belief is that Ratepayer  
19 Advocate was concerned about the availability of  
20 these sort of discounts for schools and libraries  
21 and wanted to make sure that there was something  
22 available in an era when there was a good deal of  
23 uncertainty surrounding what the Federal  
24 Universal Service Program might provide.

25 Q If you recall earlier, we had

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2 looked at Page 1 of the June 10th Order in which  
3 it stated that ONJ was part of the commitment  
4 that Bell had made as part of its plans for  
5 having an alternative form of regulation. Do you  
6 recall that?

7 A Yes, I do.

8 Q The discounted services listed on  
9 Schedule A and the discounts provided there are  
10 still part of the ONJ plan, is that correct?

11 A The initiative to provide those  
12 kinds of discounts are part of the plan, yes.

13 Q Is it your testimony now, however,  
14 that the motivation for providing these discounts  
15 as part of a plan is not related to the  
16 commitment that Bell made as part of its plan for  
17 an alternative form of regulation?

18 MR. DENNEHY: I raise the same  
19 objection, Commissioner, with respect to  
20 motivation.

21 MR. PAPPALARDO: Commissioner,  
22 Mr. West has already testified about what  
23 he believes the motivation is and I want  
24 to clarify and see if his understanding  
25 includes or excludes that proposition.

2 MR. DENNEHY: I want to be sure  
3 Mr. West knows what he's testifying to as  
4 to what he assumes the motivation is for  
5 Bell Atlantic on the one hand and the  
6 Ratepayer Advocate on the other hand and  
7 the Board's Staff.

8 MR. PAPPALARDO: I will be happy  
9 to limit it to what his understanding is  
10 of Bell Atlantic's motivation.

11 COMMISSIONER ARMENTI: Answer in  
12 the best way you can.

13 THE WITNESS: Sure. The  
14 Stipulation was an agreement signed in the  
15 context of a review of the ONJ commitment.

16 BY MR. PAPPALARDO:

17 Q I'm not sure if you're agreeing  
18 then that Schedule A was part of the ONJ  
19 commitment and entered into for that reason on  
20 behalf of Bell Atlantic or if the reason it was  
21 related to whether there was an FCC Order or not,  
22 if you can clarify that for me?

23 A Well, I don't believe it was part  
24 of the ONJ commitment, but the initiatives,  
25 because it was part of the overall ONJ



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2 commitment.

3 Q And that ONJ commitment would  
4 exist whether or not there is a Federal Fund,  
5 Universal Fund for schools and libraries, is that  
6 your understanding?

7 A That's correct. The initiative to  
8 provide that level of discount remains a  
9 commitment. The exact dollars that would be  
10 generated by whatever the true take rate versus  
11 the guesstimated or estimated one is not an  
12 ironclad part of the commitment.

13 Q But, the commitment was not  
14 entered into with either the expectation or  
15 certainly not the certainty that there may be a  
16 Federal Fund to possibly offset any of the \$50  
17 million commitment made?

18 A No, I don't think that's true. On  
19 Page 6 it states that this agreement is intended  
20 to prohibit Bell Atlantic-New Jersey from seeking  
21 reimbursement from the Universal Service Fund for  
22 discounts to schools and libraries described  
23 herein. Ratepayer Advocate signed the  
24 Stipulation.

25 Q My question was a little different